

# Breaking THE BARRIERS

TRANSNATIONAL PARTICIPATORY  
JUDICIAL TRAINING ON PROCEDURAL RIGHTS

## CASE STUDY 1 – The right of access to a lawyer

### *Facts of the case*

On 26 August 2015, after the discovery of a lifeless body in a street in Medkovets (Bulgaria), police officers went to the home of EP, the victim's son. EP admitted that he had committed homicide against his mother. After witnesses informed the above-mentioned police officers about the mental disorders EP was suffering from, the officers led him to the emergency service of a psychiatric hospital.

The Rayonen sad Lom (Lom District Court, Bulgaria) ordered EP's placing in a psychiatric hospital for six months by a judgment issued on 12 September 2015. This judgment, which was taken on the basis of the Health Act, was continuously renewed until the date of issuance of the referral judgment.

The psychiatric experts report, which was entrusted to two hospital psychiatrists, concluded that EP was suffering from paranoid schizophrenia.

By order of 7 July 2016, the Prosecutor of the city of Montana (Bulgaria) discontinued the criminal case on the grounds that EP suffered from mental illness. Considering that the latter was not able to participate in the proceedings, the prosecutor did not send the order to EP.

On 29 December 2017, the Apelativna prokuratura Sofia (Sofia Prosecutor's Office at the Court of Appeal, Bulgaria) ordered the continuation of the proceedings and reviewed the continuation of EP's placing in a psychiatric hospital under the Health Act.

An order issued on 1 March 2018 terminated the criminal proceedings against EP. The prosecution concluded that it was necessary to order compulsory medical measures because EP had intentionally committed a criminal offence under the state of mental disorder, which meant that he was not criminally liable. This order was served on the victim's daughter. As no appeal was filed by the due date, this order became final on March 10, 2018.

The Rayonna prokuratura Lom (Lom Prosecutor's Office, Bulgaria) submitted to the requesting court, the Rayonen sad Lukovit (Lukovit District Court, Bulgaria), a request for EP's placing in a psychiatric institution under Articles 427 et seq. of the Bulgarian Code of Criminal Procedure.

EP was never questioned during the criminal investigation and he was not notified of the initiation of criminal proceedings against him. As no criminal proceedings were brought against him, he was not provided with legal aid. He could not exercise any legal remedy to challenge the legal and factual conclusions of the prosecution.

## Legal framework

Regarding proceedings for compulsory medical measures under Articles 427 et seq. of the Code of Criminal Procedure, national law does not allow the judge to examine whether the alleged perpetrator of the offence was afforded the basic procedural safeguards for the exercise of the rights of the defence during the initial investigation.

## Questions

Under those circumstances, the Rayonen sad de Lukovit (Lukovit District Court) decided to suspend the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

1) Does the present procedure regarding the imposition of compulsory medical treatment measures, which constitute a form of state coercion against persons who, according to the findings of the public prosecutor, have committed an act representing a danger to the general public, fall within the scope of Directive 2012/13 and Directive 2013/48?

2) Do the Bulgarian provisions of procedural law, which regulate the special procedure for the imposition of compulsory medical treatment measures under Articles 427 et seq. of the Code of Criminal Procedure, under which the court does not have the power to refer the case back to the Prosecutor's Office and instruct it to correct the substantial procedural errors committed in the pre-trial stage, but only to accept or dismiss the application for imposition of compulsory medical treatment measures, constitute an effective remedy within the meaning of Article 12 Directive 2013/48 and Article 8 Directive 2012/13, read in conjunction with Article 47 of the [Charter], which guarantees the right of an individual to challenge in court any act that may affect their rights in pre-trial proceedings?

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